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March 23, 1993

VIA HAND DELIVERY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street N.W.
Washington, D.C. 20554

Re: MM Docket No. 92-265
Program Access Rule Making

Dear Ms. Searcy:

Pursuant to Section 1.1206(a)(1) of the Commission's Rules and Regulations, transmitted herewith in duplicate for association with the public record in the above-captioned proceeding is a copy of a letter from the undersigned on behalf of our client, the National Rural Telecommunications Cooperative ("NRTC") to Alexandra Wilson, Assistant Bureau Chief for Cable, Mass Media Bureau. Copies of the letter also were provided to the other Commission officials listed thereon.

Should you have any questions regarding this matter, please feel free to contact the undersigned.

Sincerely,


John B. Richards

Enclosure

cc: Ms. Alexandra Wilson

EX PARTE PRESENTATION

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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VIA HAND DELIVERY

Ms. Alexandra Wilson
Assistant Bureau Chief for Cable
Mass Media Bureau,
Federal Communications Commission
1919 M Street, N.W., Room 314
Washington, D.C. 20554

Re: MM Docket No. 92-265
Program Access Rule Making

Dear Sandy:

Following up on your recent meeting with Bob Phillips, CEO of our client, the National Rural Telecommunications Cooperative ("NRTC"), and the undersigned, the purpose of this letter is to respond to the cable industry's claim that distributor costs may legitimately be factored into cable programmers' wholesale pricing structures. Specifically, the cable industry argues that a brief colloquy between Senators Kerry and Inouye indicates that distributor costs can be used by the programmers to justify discriminatory wholesale prices. The cable industry's position on this issue, however, is unsupported by the statute and completely inconsistent with the intent of Congress in adopting strong program access requirements.

Costs incurred by a distributor may not be taken into

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The cable industry's emphasis on the Kerry/Inouye colloquy regarding the "level" of costs that may be considered by programmers is seriously misplaced. See, e.g., NCTA Comments, at p. 27. Apparently, the colloquy was written and submitted for the record well after the debate had closed and the vote on this legislation had been entered. Moreover, it addresses only the "level" of costs incurred. In other words, if a programmer incurs costs at the distributor level, those costs may be considered by the programmer in setting prices, terms and conditions of sale. Congress never intended, however, for costs borne by other parties to be a factor in a programmer's pricing, terms or conditions.

An example of a distributor-level cost incurred by a programmer in the "creation, sale, delivery or transmission" of programming is the DBS Authorization Center ("DBS Center") used to provide service to Home Satellite Dish ("HSD") subscribers.^{1/} The DBS Center is part of the authorization process used by cable programmers, satellite carriers and HSD distributors such as NRTC for delivering programming services to the HSD market. The DBS Center is comprised of computers, software and other equipment to provide HSD subscriber authorization.^{2/}

Programmers, satellite carriers and HSD distributors such as NRTC share the costs to operate certain portions of the DBS Center to input data regarding subscribers authorized to receive particular services. This data is sent from the DBS Center via activation links or VSATs to the programmer or satellite carrier's uplink facilities, where the signal is received, decoded, and then multiplexed with the cable datastream to be uplinked with the programming signals.^{3/} Some costs incident to operation of the DBS Center and the activation datalinks and VSATs are costs incurred by the programmer at the distributor level. The programmer pays these costs, which are incurred in the distribution of the programming (i.e., at "the distributor level.")

To the extent these costs are incurred by a programmer in providing service to a particular distributor, they may be included by the programmer in the cost basis for justifying the

^{1/} See, NRTC/CFA Reply Comments, Exhibit "B," which depicts Home Satellite Dish distribution in schematic form. A copy of Exhibit "B" is attached hereto.

^{2/} See, Comments of Superstar Connection, p. 16.

^{3/} Id.

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wholesale pricing of programming to that distributor. As you noted during our meeting, however, if there are comparable costs to serve cable or other distributors (e.g., costs to activate commercial decoder boxes), they should be offset against the similar costs incurred to serve the home dish distributor.

There is no evidence whatsoever in the statute or the legislative history indicating that Congress intended the Commission to allow programmers to charge distributors more for programming if the distributors' costs of distribution are less than cable. Allowing programmers to justify their discriminatory rates against particular distributors on the grounds that the distributors' costs are less than cable operators' costs would be contrary to the very purpose of the program access provisions: to increase competition and diversity in the multichannel video programming market, to increase the availability of programming to persons in rural and other areas not currently able to receive

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cc: The Honorable James C. Quello
The Honorable Andrew C. Barrett
The Honorable Ervin S. Duggan
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Robert Corn-Revere
John Hollar
Robert E. Branson
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William H. Johnson
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HOME SATELLITE DISH DISTRIBUTION

